

## Concrete Delivery Legislation (AB 219) Fact Sheet

Assembly Bill 219 (Daly, Chapter 739, Statutes of 2015) adds Section 1720.9 to the Labor Code. This bill expands the definition of "public works" under the California Prevailing Wage Law to include "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." The bill also defines the term "ready-mixed concrete" and specifies that the rate of pay shall be the current prevailing wage "for the geographical area in which the factory or batching plant is located" as determined by the Department of Industrial Relations. The statute also requires a written agreement calling for compliance with Prevailing Wage Law between the party hauling or delivering ready-mixed concrete and the party that engaged its services. The bill also requires that the hauling or delivery entity provide certified payroll records under Labor Code section 1776(a) to the party that engaged its services and to the general contractor within three working days after the employee has been paid, accompanied by a written time record that shall be certified by each driver for the performance of job duties. The amendments apply only to public works contracts awarded on or after July 1, 2016.

### Registration with the Department of Industrial Relations

Ready-mix haulers and entities that deliver ready-mixed concrete to public works projects are considered subcontractors under Labor Code section [1722.1](#) and must [register](#) as specified in Labor Code section [1725.5](#). A Contractors State License Board license is not required to register and work in a public works project (contractors working in a trade that is subject to licensing by the CSLB will still be subject to CSLB licensing requirements). Suppliers and other trucking companies will need to provide a Public Utilities Commission license number, U.S. Department of Transportation license number or other state or federal license, if one is required for your business. If none of these apply, the supplier can register with DIR by selecting "other" in the license type and entering N/A for not applicable in the license number field.

### Determining Coverage

1. **The bill says it applies to "public works contracts that are awarded on or after July 1, 2016." Does this mean it does not apply to contracts in process?**

**Response:** Correct. If a public works contract is awarded prior to July 1, 2016, the delivery of concrete to that public work is not subject to AB 219.

2. **Traditionally, ready-mix suppliers have not always known whether material is being supplied for a public project or not. This is in part due to the on-demand nature of ordering, and because suppliers may be far down the line from the project owner, contractor, and multiple subcontractors. How will they now know if an order is for public works? Who will be held responsible if they are not**

**informed? What will be the recourse if it is known after the fact that an order is for public works? How will a ready-mix supplier know if a project is public works, but under the minimum threshold for applying prevailing wages?**

**Response:** If the site owner is a public entity (e.g. school, library), it is likely a public work. The entities engaging the ready-mix services should know if the project is subject to the public works statutes, and it should be noted as part of the written agreement required by AB 219. The entities engaging the ready-mix services should also know if a project is exempt. There are potential legal consequences to misleading contractors and subcontractors about whether a project is exempt, including joint and several liability for back wage and penalty assessments.

**3. Do apprenticeship requirements apply to this law?**

**Response:** Apprenticeship requirements apply if the prevailing wage rate is based on an apprenticeable craft (i.e. a craft for which there is an approved apprenticeship program). Apprenticeable crafts are usually indicated with a pound or hash-tag sign (#) by the applicable prevailing wage rate.

**4. Ready-mix companies often donate concrete to schools, parks, and charitable organizations. Will these be subject to prevailing wages?**

**Response:** It depends. If the project owner is a public entity, then it is probably a public works project. However, this is something the ready-mix company can and should clarify with whoever is receiving the donated concrete.

**5. How does this law apply to deliveries from out-of-state? For instance, material might be delivered from Reno for a highway project in California.**

**Response:** AB 219's requirements apply to deliveries that originate out of state. If the Director has not specified a prevailing wage for the geographic area in which the factory or batching plant is located, the contractor should use a rate from the nearest geographic area.

**Determining Rate of Pay**

**1. Which prevailing wage rate applies? Do different rates apply to different parts of the delivery work?**

**Response:** The applicable prevailing wage rate is for the classification of "Driver - Mixer Trucks." This rate applies to all parts of the mixer - truck driver's work.

**2. What portion of the driver's work is covered? What if the driver is not on a round trip? If there is no round trip does the prevailing wage stop once the delivery is completed? What if the driver is delivering to some prevailing wage projects and some non-prevailing wage projects?**

**Response:** For delivery to a public works project, prevailing wage rates apply from the time spent receiving concrete at the batch plant to the time the driver returns to the batch plant. If a truck hauling concrete to a prevailing wage job does not return to the same batch plant, the post-delivery drive to a different batch plant should be counted as the return. There will always be a return trip as the trucks will not be left indefinitely at the job site. The statute does not provide for any exceptions from payment of prevailing wages for time spent making intermediate stops at other potentially non-public works locations. The entire delivery process and the return trip are covered and must be paid at the applicable prevailing wage rate.

3. **For example, how would the round-trip wage be calculated if a driver goes from plant #1 (in DIR prevailing wage region X), unloads concrete at public works project A, then goes to plant #2 (in DIR prevailing wage region Y), then delivers a load of concrete to commercial project B, then goes to plant #3 (in DIR wage region Z), then delivers to public works project C, and then returns to plant #1?**

**Response:** From the time the driver begins receiving the concrete at plant #1 until the driver reaches plant #2 the rate will be the prevailing wage rate for region X. From that time until the driver begins receiving the concrete at plant #3, the driver may be paid a non-prevailing wage rate. From the time the driver begins receiving the concrete at plant #3 until he returns to plant #1 the driver is entitled to the prevailing wage rate for region Z.

4. **If on any day a mixer driver spends 2 hours at a plant, 4 hours delivering to public works projects, and 4 hours delivering to commercial projects, which Wage Order applies? Will it be Wage Order #1 for manufacturing, Wage Order #16 for construction, or both, depending on where the driver is at any one time?**

**Response:** The Labor Commissioner made the following determination in a 2001 opinion letter: "Ready-mix drivers engaged in the delivery of cement from a cement plant to a construction job-site, if employed by the business that manufactures the cement, are covered by IWC Order 1-2001 [Wage Order #1]."

5. **Will a new wage survey be done and when will the new rates be published? How frequently will wage rates be updated?**

**Response:** Existing rates in every county cover AB 219 work under the classification of "Driver - Mixer Trucks." Some rates are based on survey data and others are based on local collective bargaining agreements. (The ones based on survey data begin with C-MT-830; the ones based on collective bargaining agreements begin with C-MT-261.) Rates based on survey data cannot be updated without a new wage survey, usually done in response to a specific request and supporting petition under Labor Code section [1773](#) and Title 8, California Code of Regulations, sections [16200](#) and [16302](#). However, wage rates that are based on collective bargaining agreements are regularly adjusted as the agreements are revised.

6. **Which rate applies if a company has a union rate of \$60/hour, but the prevailing wage is \$18/hour?**

**Response:** State law would require that the driver be paid at least \$18/hour. However, the employer may be bound to pay the higher rate because of its contractual obligation to the workers under the collective bargaining agreement.

### **Payroll Records**

1. **Do ready-mix hauling and delivery companies need to submit electronic payrolls to DIR in addition to paper payrolls to the general contractor and subcontractor who engaged them? What is the penalty for failure to submit payrolls within three days?**

**Response:** Yes, payroll records have to be submitted electronically to DIR in addition to being submitted to the party who engaged the ready-mixed concrete delivery. Payroll records must be submitted to DIR on a monthly basis or as otherwise specified by the awarding body. There is no penalty in the statute for not submitting payroll records to the general contractor and party who engaged the ready-mixed concrete services within three days. However, the consequences of not meeting this deadline may be covered in their contract or agreement.

2. **How will submittal of payroll records under this law differ from how they are submitted by other subcontractors?**

**Response:** The new law requires ready-mix companies to submit copies of their certified payroll records (CPRs) to the party that engaged them and to the general contractor (may be the same entity). Because public works contractors are jointly and severally liable for prevailing wage violations with the subcontractors working under them, many will include this requirement to provide CPRs as part of the purchase agreement or subcontract. However, AB 219 also makes this a legal requirement and further specifies when the CPRs must be furnished, as well as the need for the CPRs to be accompanied by time records certified by the drivers.

The law does not specify whether the CPRs and other records furnished to these entities must be on paper or electronic format. It is up to the parties to determine that in their agreement. Once DIR's electronic Certified Payroll Reporting system is fully deployed with identity management features, contractors will have access to their subcontractors' CPRs, through DIR's system, at the same time that DIR does. However, that will not necessarily meet the deadline specified in AB 219 nor will it include the certified driver time records.

The law does not specify what happens if the 3 day submission deadline or driver certification requirements are not met. These are not requirements that would fall within the Labor Commissioner's enforcement responsibilities, but they would affect the rights

and responsibilities of contractors and subcontractor suppliers in relationship to each other.

3. **The law says payroll records should be "accompanied by a written time record that shall be certified by each driver for the performance of job duties". What does "certified by each driver" mean? Can the time records be certified electronically by the driver? Is there a particular format or procedure required? Is a "written time record" the same as a payroll record?**

**Response:** "Certify" means that the driver is attesting to the accuracy of the written time record; "by each driver" means that each individual driver is certifying the accuracy of his or her own time records. It is possible to provide electronic certifications, and there is no particular format that is required as long as there is a way to tie the certification to the person who provides it. A written time record is not necessarily the same as a payroll record – it depends on how the driver's time is recorded for purposes of determining the hours worked and compensation due for prevailing wage jobs.

4. **How should certified payrolls be organized? Are they per driver, per plant, or per project?**

**Response:** By project, which is how prevailing wages are traditionally reported and how they will need to be reported on DIR's electronic Certified Payroll Reporting (eCPR) system.

### **Contract Agreement and Certification**

1. **What constitutes a "written subcontract agreement"? What does it mean to be a subcontractor "only for the purpose of this [prevailing wage] chapter"? For example, will mechanics lien laws still apply?**

**Response:** "Written subcontract agreement" refers to the contract or other agreement between the public agency, company, or person who wants to obtain ready-mixed concrete and the ready-mixed concrete supplier. There must be some type of agreement, in writing, between the two. "Only for purposes of this chapter" means that a ready-mixed concrete supplier will have the status of a "subcontractor" under the Public Works chapter of the Labor Code (sections [1720 – 1861](#)) and will have all the responsibilities of a subcontractor under that chapter when providing ready-mixed concrete to a public works project, including but not necessarily limited to being registered with the Department of Industrial Relations and paying prevailing wages to workers who deliver the ready-mixed concrete to the project. However, this does not make the company a "subcontractor" under the mechanics lien laws found in the Civil Code or under any other set of laws outside of the Public Works chapter of the Labor Code. The rights and responsibilities of a ready-mixed concrete supplier under any other set of laws depend on their status under those laws.

2. **Will DIR specify minimum requirements for what is in a contract? Can DIR provide a template?**

**Response:** DIR suggests that an invoice or purchase order that includes the required statutory language may be sufficient. However, the party who engages the ready-mix company may require more. DIR does not provide templates for contracts between private parties or between a private party and any public entity as these contracts may involve additional requirements and considerations with which DIR is not familiar.

3. **Will a different section of the Uniform Commercial Code apply now to ready-mix suppliers for public works?**

**Response:** No, the requirements of AB 219 are limited to the Public Works chapter of the Labor Code and not intended to change the status of ready-mix suppliers under any other set of laws outside of the Public Works chapter of the Labor Code.

4. **Will ready-mix suppliers now be listed under the Subletting and Subcontracting Fair Practices Act, like other subcontractors are?**

**Response:** AB 219 does not make ready-mix suppliers "subcontractors" for purposes of the Subletting and Subcontracting Fair Practices Act or any other laws outside of the Public Works chapter of the Labor Code.

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